

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

KEVIN A. APGAR,)	
)	Case No. 07-505 (SLR)
Plaintiff,)	JURY TRIAL DEMANDED
v.)	
)	
WARDEN RAPHAEL WILLIAMS,)	
DR. BINNON, JAMES WELCH,)	
)	
Defendants.)	

**DEFENDANT DR. BINNON'S
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant Dr. Binnon¹ ("Answering Defendant") by and through his undersigned counsel of record, hereby responds to Plaintiff's Amended Complaint and states as follows:

1. To the extent the allegations of Plaintiff's Complaint state conclusions of law, no response is required.
2. To the extent the allegations of Plaintiff's Complaint recite the contents of medical records, such documents speak for themselves and all allegations inconsistent with such records are denied.
3. Factual allegations are denied unless consistent with Plaintiff's medical records.
4. To the extent the allegations of Plaintiff's Complaint addresses the conduct of parties, individuals or entities other than Answering Defendant, no response by Answering Defendant is required.
5. Answering Defendant denies that he was responsible for any violation of Plaintiff's constitutional rights.

¹ The proper name for this defendant is Peter Binnion, M.D.

6. Answering Defendant denies that he was responsible for any violation of 42 U.S.C. § 1983.
7. Answering Defendant denies that he was responsible for any medical negligence.
8. Answering Defendant denies that he acted with deliberate indifference to Plaintiff's medical needs.
9. Answering Defendant denies that Plaintiff's medical needs were "serious".
10. Answering Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Plaintiff's Complaint and so they are denied.

ADDITIONAL DEFENSES

11. Plaintiff fails to state a claim upon which relief can be granted.
12. Answering Defendant was not deliberately indifferent to any serious medical need.
13. Plaintiff fails to state a claim against Answering Defendant for medical negligence.
14. To the extent Plaintiff purports to state a claim for medical negligence pursuant to State law, such claim is barred by Plaintiff's failure timely to file an affidavit of merit pursuant to 18 *Del. C.* § 6853.
15. Plaintiff's claims are barred by the statute of limitations.
16. Plaintiff's Complaint fails for insufficient service of process.
17. Plaintiff's Complaint fails for failure timely to serve process.
18. Plaintiff's Complaint fails for improper service of process.
19. Answering Defendant was not acting under color of State or Federal law.
20. Plaintiff fails adequately to plead a claim for punitive damages.
21. Answering Defendant provided Plaintiff with medical care that was appropriate for his conditions and which met the applicable standard of care.

22. Plaintiff has failed to exhaust his administrative remedies.
23. Plaintiff's injuries, if any, resulted from a superseding, intervening cause.
24. Plaintiff's injuries, damages or claims are the result of a pre-existing condition not caused by any action or omission of Answering Defendant.
25. Plaintiff's injuries, losses, or damages, if any, were the direct, sole and proximate result of activities or conduct of persons or entities for whom Answering Defendant is not responsible and over whom Answering Defendant had no authority or control.
26. Answering Defendant hereby adopts any and all additional defenses hereinafter asserted by his co-defendants.
27. Answering Defendant reserves the right to assert additional defenses in the future to the extent warranted by discovery.

ANSWER TO ALL PRESENT AND FUTURE CROSS-CLAIMS

28. Answering Defendant denies all cross-claims asserted against him now or hereinafter.

WHEREFORE, Answering Defendant respectfully requests entry of judgment in his favor and against Plaintiff together with costs and attorneys' fees and such other relief as this Honorable Court deems just and appropriate.

BALICK & BALICK, LLC

/s/ James E. Drnec
James E. Drnec, Esquire (#3789)
711 King Street
Wilmington, Delaware 19801
302.658.4265
Attorneys for Defendant Peter Binnion, M.D.

Date: May 23, 2008

CERTIFICATE OF SERVICE

I, James Drnec, hereby certify that on the 23rd day of May 2008, the foregoing Answer to Amended Complaint was filed via CM/ECF and served upon the following in the manner indicated:

Kevin A. Apgar
SBI# 302981
Howard R. Young Correctional Institution
P.O. Box 9561
Wilmington, DE 19809

VIA FIRST CLASS MAIL

Stacey X. Stewart, Esquire
Department of Justice
State of Delaware
820 N. French Street, 8th Floor
Carvel Office Building
Wilmington, DE 19801

VIA CM/ECF FILING

/s/ James E. Drnec
James E. Drnec, Esquire (#3789)